

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KATHLEEN MCINTYRE,
Plaintiff(s),
v.
UPS, et al.,
Defendant(s).

Case No. 2:25-cv-00730-MMD-NJK

REPORT AND RECOMMENDATION

Pending before the Court is an order to show cause why the case should not be dismissed for lack of subject matter jurisdiction. Docket No. 4. No response was filed.

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts have limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

As explained in the order to show cause, Plaintiff's complaint does not establish subject matter jurisdiction. As to diversity jurisdiction, the complaint does not clearly identify the state citizenship of each party and does not show that the amount in controversy exceeds \$75,000. *But see* 28 U.S.C. § 1332(a). As to federal question jurisdiction, the complaint does not identify a federal cause of action or federal question. *But see* 28 U.S.C. § 1331. Moreover, Plaintiff failed to respond to the order to show cause to explain how jurisdiction would exist in this case,

1 notwithstanding a warning that “[f]ailure to comply with this order may result in dismissal of
2 this case.” Docket No. 4 at 2 (emphasis in original).

3 Accordingly, Plaintiff has not met her burden of showing federal subject matter jurisdiction
4 and the undersigned **RECOMMENDS** that this case be **DISMISSED** without prejudice to refiling
5 in an appropriate state court.

6 Dated: May 13, 2025

7 
8 Nancy J. Koppe
United States Magistrate Judge

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10 **NOTICE**

11 This report and recommendation is submitted to the United States District Judge assigned
12 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
13 recommendation must file a written objection supported by points and authorities within fourteen
14 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
15 a timely objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951
16 F.2d 1153, 1157 (9th Cir. 1991).

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